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No. 87-1049

In the Supreme Court
OF THE
United States

OCTOBER TERM 1987

AIR FLORIDA SYSTEM, INC.,
INTERFIRST BANK, DALLAS, N.A.,
Petitioners,

VS.

FEDERAL DEPOSIT INSURANCE CORPORATION,
Respondent.

PETITIONERS' REPLY MEMORANDUM

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PETITIONERS' REPLY MEMORANDUM

Three arguments raised by the FDIC's Brief in Opposition require Petitioners' reply.*

First, the fact that the District Court decided this matter in a lawsuit which was subsequent to the proceeding in which it approved the receiver's contract (Opposition at 7) only underscores the need to grant certiorari. If in lawsuits *following* a receivership action a subsequent court can void a District Court-approved transaction, even without fraud, mistake or excusable neglect, then the required finality of such sales *will* be eroded, and Congress' directive that the receiver may sell "on such terms as the *court* shall direct", 12 U.S.C. § 192 (emphasis added), will become meaningless.

* Petitioners are corporations. Corporate subsidiaries and affiliates have been listed in the Petition.

Second, the FDIC's argument that Petitioners did not raise below the contention advanced here (Opposition at 7) is misleading. The issue did not arise until the Court of Appeals, in denying Petitioners' Petition for Rehearing, *changed* its opinion to rule entirely as a matter of law, and to disregard the District Court's interpretation of the contract made under its supervision.

Third, awaiting remand before review, as the FDIC suggests (Opposition at 8), will only leave on the books the erroneous and dangerous precedent that contracts made under the District Court's supervisory authority can be overturned even without fraud, mistake or excusable neglect, simply because a later Court interprets the contract differently than did the supervising court. Nothing that happens on remand can change that. In the meantime, numerous bank takeovers and bankruptcy proceedings will occur, and participants need to know that contracts made under the supervisory authority of the District Courts will not be disturbed.

For these reasons, and those set forth in the Petition, Petitioners urge the Court to grant certiorari.

Dated: March 22, 1988

Respectfully submitted,

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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On March 22, 1988, I served the within Petitioners' Reply Memorandum in re: "Air Florida System, Inc. vs. Federal Deposit Insurance Corporation" in the United States Supreme Court, October Term 1987, No. 87-1049;

On the Parties in said action, by placing Three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

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Washington, D.C. 20429

Charles Fried, Esquire
Solicitor General
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Washington, D.C. 20530

All Parties required to be served have been served.

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on March 22, 1988, at Los Angeles, California.

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CE CE MEDINA